

A topographic map of a wetland area in Rhode Island. The map shows contour lines, roads, and various geographical features. Key locations include Liberty Ch., Liberty, Arrow Swamp, Chickasha Brook, Yaugoo Pond, and Mt Pleasant. The map is oriented with North at the top. The title "WHAT'S THE SCOOP ON WETLANDS?" is centered over the map in a large, bold, serif font.

WHAT'S THE SCOOP ON WETLANDS?

Frequently Asked Questions about
DEM's Freshwater Wetlands Program

Rhode Island Department of Environmental Management
May 2000

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DEM's Freshwater Wetlands Program



RI Department of Environmental Management
235 Promenade St., Providence, RI 02908

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PREFACE



The purpose of this guide is to present responses to frequently asked questions about the Department of Environmental Management's (DEM) Freshwater Wetlands Program. The questions and responses are arranged by topic and are presented sequentially. What is a wetland? How do I know if I have wetlands on my property? If I have wetlands, do I automatically need a wetlands permit? Are any activities exempt from permitting requirements? What does DEM require for a permit application? Under what circumstances does DEM issue a wetlands permit? What should I do with my wetlands permit?

This publication is a guide and does not substitute for the Rhode Island Freshwater Wetlands Act (see Rhode Island General Law Sections 2-1-18 et. seq.) or the Department's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetland Act*. Through the question and answer format, the guide is intended to provide an overview and summary of the *Rules and Regulations* and in many cases interpret the intent of the *Rules and Regulations* and the permit process. The guide will be most useful to those who are new to the Freshwater Wetlands Program. Maybe you have just purchased property and are planning to build a house. Or maybe you are a new municipal public works official who wants to undertake some roadway improvements. In both circumstances you may be asking, "How will wetlands affect my project?" The Department anticipates that realtors, new consultants, municipal officials, and others involved in the development of property in Rhode Island will also find this guide helpful. You do not necessarily need to read the guide in its entirety. Many of the sections stand alone.

The guide applies to the DEM-administered Freshwater Wetlands Program only. The Coastal Resources Management Council (CRMC) has recently been charged with regulation of freshwater wetlands in the vicinity of Rhode Island's coast. The guide generally describes the CRMC's new program but does not provide specific details about their regulations or operations. If your property is close to the coast you may want to contact the CRMC directly at (401) 783-3370.

Finally, the Department would like to receive your feedback about the usefulness of this guide. Did you find it helpful? What other questions do you

have? What additional information would you like to see? Please send your comments to Wetland Permit Guide @ DEM Office of Water Resources, 235 Promenade Street, Providence, RI 02908 or via email to the DEM website at wresource@dem.state.ri.us.

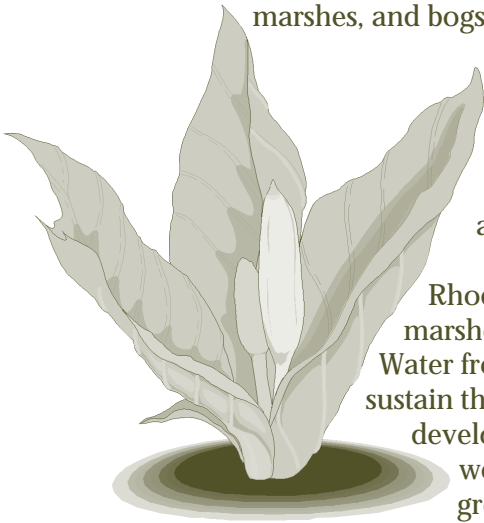
INTRODUCTION



What are freshwater wetlands?

Generally speaking, wetlands are areas where water covers the soil or is near the surface of the soil for varying periods of time during the year. Wetlands commonly occur between uplands and water bodies such as lakes, rivers and streams; however, many wetlands may be isolated and separate features in the landscape. Legally, wetlands in Rhode Island fall into a number of categories all with specific definitions found in the Freshwater Wetlands Act and the *Rules and Regulations*.

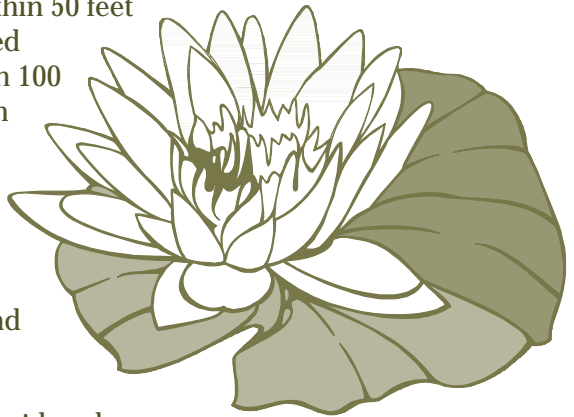
The Act and *Rules* define not only vegetated wetlands such as swamps, marshes, and bogs, but they also include open or flowing water bodies such as ponds, rivers, and streams as wetlands. In addition, the Act and *Rules* include upland areas adjacent to vegetated wetlands and water bodies as “wetlands” for protection purposes. These wetlands are called perimeter wetlands, riverbank wetlands, and floodplains.



Rhode Island’s vegetated wetlands include swamps, marshes, bogs, and emergent, shrub and forested wetlands. Water from rain, snowmelt, and groundwater is necessary to sustain these wetlands and is the controlling factor in the development of wetland soils and plants. Vegetated wetlands may have standing surface water above the ground or a water table that is underground but close to the surface at least part of the year. The water levels may fluctuate with seasonal changes and the wetland soils may be alternately wet and dry. The frequent wetting and drying make these wetland soils distinctly different from upland soils. The plants that develop and thrive in these wetlands have special adaptations that enable them to live where it is so wet. Only those plants that can withstand the low oxygen levels in the saturated soils can survive.

Rhode Island’s other wetlands include flowing and standing water wetlands, floodplains, and perimeter and riverbank wetlands. Flowing and standing water

wetlands include rivers, streams, intermittent streams, ponds, special aquatic sites, and areas subject to storm flowage. Floodplain wetlands are those areas that are flooded during a 100-year storm. Floodplain wetlands may be adjacent to rivers and streams or they may be isolated. Perimeter wetlands and riverbank wetlands are upland areas adjacent to swamps, marshes, ponds, bogs and rivers and streams. For regulatory purposes, that area of land within 50 feet of a swamp, marsh, bog, or pond is considered “perimeter wetland.” That area of land within 100 feet of both sides of a river or stream less than 10 feet wide, and that area of land within 200 feet of a river or stream 10 feet wide or greater are called “riverbank wetlands.” When left in an undisturbed condition these upland areas can minimize the effects of development on wetlands and protect wetland functions and values.



Some wetlands have historically been considered wastelands, sources of mosquitoes and disease, and lands that could be “improved” by draining or filling. More than half of the United States’ wetlands have been lost. They have been filled for development, drained for farm fields, and dredged for waterways. However, during the last few decades, scientists have begun to better understand and appreciate the ecology of wetlands and have recognized that they perform special functions and provide values to humans that no other areas in the landscape do. Wetlands of all types provide important benefits to people and the environment. They are among the most productive, and at the same time, the most sensitive areas within any watershed.

Why are wetlands so important?

Freshwater wetlands perform functions and provide values that no other areas in the landscape do. These functions and values are vital to people and to the environment. Wetlands reduce flood and storm damages, protect and improve water quality, provide important fish and wildlife habitat, and support hunting, fishing, and other recreational activities. All of these benefits contribute to a healthy and stable environment.

Flood protection

Wetlands help control floodwaters by storing water during periods of heavy rain or snowmelt. The slow release of the floodwaters from wetlands to streams and rivers effectively reduces the risk of flooding downstream. Wetlands within urban areas are particularly important in preventing flooded basements, parking lots, and roads. When wetlands are altered or filled, their ability to temporarily hold floodwaters may be reduced and may result in costly loss of property and endangerment of lives.

Surface and Groundwater Protection

Wetlands provide key links in the water cycle. They are important in maintaining stream flow during periods of drought by storing water during rainy periods and slowly releasing it, thereby keeping streams flowing when they might otherwise be dry. This also reduces stress to plant and animal communities in and around streams. In addition, some wetlands help maintain a pathway for surface water to recharge groundwater reservoirs that many people rely on for drinking water.

Water Quality Protection

Wetland plants and soils can store, filter, and naturally treat nutrients and other stormwater pollutants that may otherwise reach rivers, streams and lakes. This ability helps keep streams and rivers clean enough to support wildlife, provides high quality water to reservoirs, and ensures high value recreation areas for fishing and swimming. Wetlands also shade the flowing water in streams and rivers, thereby keeping it cool in the hot summer months. Because cool stream water contains more oxygen than warm water, it is much more valuable for trout and other sport fish.

Recreation and Aesthetics

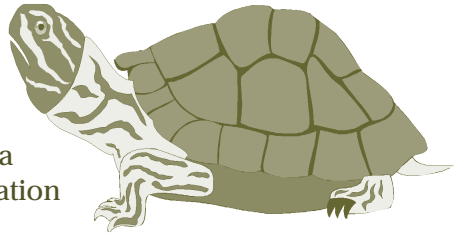
Wetlands support a wide range of recreational activities. Swimming, fishing, boating, ice skating, and water skiing are totally water-dependent. Other activities like hiking, photography, bird watching, and nature study may not be dependent on the presence of water but are enhanced by and often focused around wetlands. The quality of these recreational activities depends a great deal on the health of the wetland system. Wetlands also have an important aesthetic value since they can provide attractive open space in an increasingly more developed landscape.

Wildlife and Wildlife Habitat

Many animals, most obviously fish, depend entirely on wetlands to survive. There are also other animals that live most of their lives in upland areas but depend on wetlands for breeding. Spring peepers are small frogs that live in the woods during most of the year but return to vegetated wetlands each spring to breed. If you live near wetlands, you can hear the chorus of peepers on a spring night.

Many mammals, amphibians, reptiles, and birds may depend on wetlands for feeding, nesting, migration stopovers or for wintering habitat. Even small wetlands like vernal pools that appear dry much of the time are crucial to the survival of certain species.

Vernal pools are small temporary bodies of water that are most visible during the spring months. The fact that these vernal pools dry out each year means that they cannot support a fish population. Without the threat of fish predation vernal pools are attractive areas for amphibian breeding. Rhode Island's vernal pools are critical breeding areas for wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*) and marbled salamanders (*Ambystoma opacum*). Without vernal pools these species would disappear from the landscape.



More than one-third of the United States' threatened and endangered wildlife species live only in wetlands, and nearly half of them use wetlands at some point in their lives. Wetlands are also a critical habitat for many of Rhode Island's rare and threatened wildlife species.

How can I obtain a copy of DEM's wetlands Rules and Regulations?

Copies of DEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* are available free of charge by calling the DEM Office of Technical and Customer Assistance at 222-OTCA, or by visiting them in the Foundry Building, 235 Promenade Street, Providence. The *Rules and Regulations* are also posted on the DEM Web page at www.state.ri.us/dem.

WETLANDS – WHERE ARE THEY?



How do I know if I have wetlands on my property?

Freshwater wetlands are widespread throughout Rhode Island and can be difficult for the nonscientist to recognize. The easiest wetlands to identify are the lakes, ponds, and rivers that have permanent surface water. Wetlands that have surface water for only part of a year or ones that may never have surface water, but have an underground water table that is close to the surface for at least part of the year, are more difficult to identify without a trained eye. These dryer wetlands may line the shores and banks of lakes, ponds, and rivers, but they may also be isolated. These isolated wetlands that seldom or possibly never have surface water, but have water near the surface of the ground, and are dominated by wetland plants are usually the hardest for the layperson to identify.



What Makes a Vegetated Wetland



1. Water source = hydrology
2. Water-loving plants = hydrophytes
3. Presence of wet or hydric soils



Wetland scientists use three indicators to determine if an area is a vegetated wetland. These indicators are the basis of the scientific definitions of wetlands: evidence of a water source; wetland vegetation; and hydric or wetland soils. Rhode Island's *Wetlands Rules* recognize two official parameters—wetland vegetation and hydrology. Hydric or wetland soils are used as an indicator of hydrology. Generally, if water ponds on your property, flows across your land even occasionally, or there are areas on your property where your feet get wet (particularly in the spring), then you may have wetlands. If more than 50% of the trees, shrubs, or herbaceous plants on your property are those listed in the Freshwater Wetlands Act definitions, then you might suspect that you have wetlands. If the soil underfoot seems soft, wet, and muddy at least in the spring; if you dig a hole that fills with water; or if your soil is rich, dark, and organic-smelling, then you may have wetlands.

To add to the difficulty, some areas that are regulated as freshwater wetlands in Rhode Island are in fact upland areas. Land within 50 feet of swamps, marshes, bogs,

and ponds, as well as land within 100 feet or 200 feet of rivers and streams are regulated as wetlands. These perimeter wetlands and riverbanks wetlands may not be wet at all, but may be high and dry land.

Wetlands are sometimes difficult to identify even for scientists who specifically study hydrology, botany, and soils. A consulting wetland scientist can advise you whether an area meets the definition of a wetland, but if you are proposing to work in or near a wetland, DEM should confirm the determination in order to ensure proper regulatory protection

Is there a map of all the wetlands in Rhode Island?

No, there is no single reliable map that encompasses all of the freshwater wetlands regulated by DEM. Given the scale necessary to support regulatory decisions, it would be very expensive to undertake a reliable field survey of wetlands on a statewide basis. There are, however, several different map sources that show **some** of the State's wetlands. Wetland scientists frequently refer to these maps before heading out on a field inspection.



- 1) The U. S. Geological Survey topographic maps illustrate perennial and intermittent streams, and some large, obvious wetland complexes.
- 2) The Rhode Island Soil Survey (Rector, 1981) illustrates areas of poorly drained and very poorly drained soils that may coincide with wetlands.
- 3) The U.S. Fish and Wildlife Service National Wetland Inventory maps of Rhode Island illustrate wetlands according to an established national classification system (Cowardin et al, 1979).
- 4) Floodplain wetlands are illustrated on maps prepared by the Federal Emergency Management Agency.
- 5) And finally, almost ten years ago, Rhode Island's wetlands greater than ¼ acre in size were mapped based on interpretation of aerial photographs with limited field verification. The mapping was incorporated into the RI Geographic Information System (RIGIS).

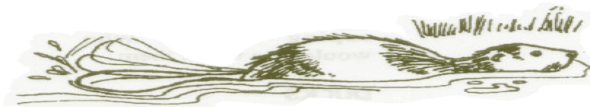
The National Wetland Inventory and RIGIS wetland maps do not provide the parcel-level information necessary to make site-specific decisions, so they are not relied upon by the Department's wetlands staff in the regulatory process. However they are used by municipalities, consultants, and scientists for broader planning, research, and management purposes.

All of the map sources have some value, but not one of them shows all of Rhode Island's wetlands; small wetlands are often overlooked. It is important to keep in mind, that for regulatory purposes, a field inspection by a wetland scientist is necessary to confirm whether or not there are wetlands on a property.

What about the Coastal Resources Management Council (CRMC)? I understand that they are regulating freshwater wetlands now.

As of August 18, 1999, freshwater wetlands that are "in the vicinity of the coast" are regulated by the CRMC. Biologists from the two agencies worked together to establish a boundary line that divides the separate areas of freshwater wetlands jurisdiction. Generally the jurisdictional boundary coincides with state and local roads, and those freshwater wetlands shoreward of the boundary, i.e., "in the vicinity of the coast," are under the jurisdiction of CRMC. Those freshwater wetlands landward of the boundary remain under the authority of DEM.

New freshwater wetlands applications for property shoreward of the jurisdictional boundary should be submitted to CRMC for review, while new freshwater wetlands applications for property landward of the boundary should be submitted to DEM. The maps that illustrate the boundary are available for viewing at DEM Office of Technical and Customer Assistance, at CRMC in the Stedman Government Center, Wakefield, and at the applicable coastal city and town halls. ***Keep in mind that this Guide pertains to the DEM Wetlands Program.*** Although CRMC adheres to the same protection standards as DEM, CRMC's procedures may differ. Any questions about CRMC's freshwater wetland program should be directed to its permitting staff at (401) 783-3370.



Are all wetlands regulated? Does it matter how big they are?

Through the Freshwater Wetlands Act and the *Rules and Regulations* that govern the Act, DEM regulates **all** freshwater wetlands on the landward side of the jurisdictional boundary no matter how big or small the wetlands are. The *Rules and Regulations* define all regulated areas and in some cases size is a determining factor. Specifically, *ponds* must be at least $\frac{1}{4}$ acre in size and hold water for more than 6 months; *swamps* must be at least 3 acres in size; *marshes* must be 1 acre or greater; and *bogs* can be any size. If a wetland meets the size criteria, DEM regulates not only the main body of the wetland, but also that area of land within 50 feet of the wetland as the perimeter wetland. The “perimeter wetland” buffers and protects the main body of the wetland from adverse effects and is an integral component of the wetland it is associated with.

It may be that the wetland on your property meets the definition of pond, swamp, or marsh but falls below the size criteria that triggers designation of a 50-foot perimeter wetland. In that case the DEM regulates the main body of the wetland only and not any adjacent perimeter wetland. The Department refers to these undersized wetlands as submergent plant communities, special aquatic sites, shrub wetlands, forested wetlands, and emergent plant communities.

In addition to the main channels, DEM also regulates a 100-foot “riverbank wetland” adjacent to both sides of rivers and streams that are on average less than 10 feet wide, and a

Some Common Wetland Plants

Trees:

Red maple (*Acer rubrum*)
Black gum (*Nyssa sylvatica*)
Ash (*Fraxinus* sp.)

Shrubs:

Highbush blueberry (*Vaccinium corybosum*)
Sweet pepperbush (*Clethra alnifolia*)
Swamp azalea (*Rhododendron viscosum*)
Spicebush (*Lindera benzoin*)
Azaleas (*Rhododendron* sp.)

Herbs:

Cinnamon fern (*Osmunda cinnamomea*)
Sphagnum moss (*Sphagnum* sp.)
Skunk cabbage (*Symplocarpus foetidus*)

Emergents:

Cattail (*Typha latifolia*)
Tussock sedge (*Carex stricta*)
Cutgrasses (*Leersia* sp.)

200-foot “riverbank wetland” adjacent to rivers and streams that are on average 10 feet or greater in width. Riverbank wetlands helps to buffer rivers and streams from human impact.

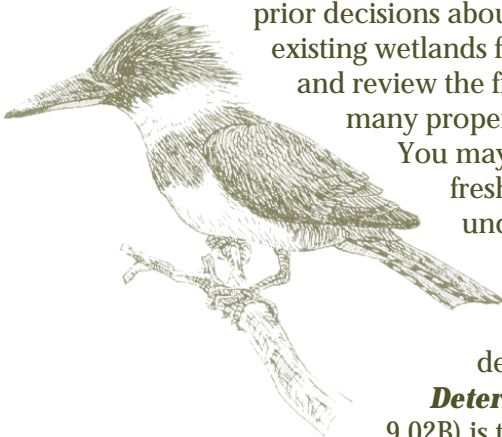
When DEM determines whether you have wetlands on your property or when they verify the edges of the wetlands that you have flagged on your property, they will also inform you whether you have perimeter wetlands and riverbank wetlands. Sometimes the perimeter wetland and the riverbank wetland overlap, in which case, the limit of DEM’s jurisdiction is at the broadest line. Other times the main body of the wetland may actually be on the property next door, but the perimeter wetland and riverbank wetland may extend onto your property.

DEM also regulates floodplains, which are the land areas adjacent to rivers, streams, or other bodies of flowing water, that on average are likely to be covered with floodwaters resulting from a 100-year storm. In many cases, the floodplain limit may exceed both the perimeter wetland and riverbank wetland.

Will DEM tell me if I have wetlands on my property?

It is possible that wetland biologists from DEM have already visited your property and determined whether or not there are wetlands. The DEM staff can search the computer list of DEM files to determine if there have been any prior decisions about your property. If you learn that there is an existing wetlands file, you could make an appointment to visit DEM and review the file contents. Prior to August 18, 1999, DEM visited many properties that are now under the jurisdiction of CRMC.

You may want to contact DEM about possible past freshwater wetland actions even if your property is now under CRMC jurisdiction.



If DEM has not already visited your property, there is an application process where you can determine if there are wetlands. The ***Request to Determine the Presence of Wetlands*** application (Rule 9.02B) is the most appropriate one for this purpose. This application does not require that you hire a private wetland scientist to complete any fieldwork, but you may need the

Freshwater Wetlands regulated by DEM

SWAMPS,
MARSHES,
BOGS,
PONDS
RIVERS,
STREAM AND INTERMITTENT STREAMS,
EMERGENT AND SUBMERGENT PLANT COMMUNITIES,
FORESTED WETLANDS,
SHRUB WETLANDS,
SPECIAL AQUATIC SITES,
PERIMETER WETLANDS,
100 FOOT AND 200 FOOT RIVERBANK WETLANDS,
FLOODPLAINS,
AREAS SUBJECT TO FLOODING, AND
AREAS SUBJECT TO STORM FLOWAGE.

assistance of a professional surveyor or engineer for the preparation of a plan of your property. You would complete the appropriate application form, attach the site plan with local field reference points, and send it to DEM with the appropriate application fee. It is possible for you to prepare this application yourself, but you must be sure that your site plans are complete with a title block, north arrow, scale, date, property lines, etc. (see Appendix 5 of the *Rules and Regulations* for site plan requirements). You may also have to clearly

mark your property corners in the field to help the DEM wetland scientist keep oriented on your property. Based on your application, DEM will visit your property and inform you whether you have wetlands or not. They will indicate generally where they are on your property and what types of wetlands they are. DEM will not determine, however, the precise edges of the wetlands with this type of application.

If you already suspect that you do have wetlands on your property, then you may want to hire a private wetland biologist to flag or mark the edges of the wetlands. You will also need a land surveyor to survey the wetland flag locations and to illustrate them on a plan of your property. This plan should be submitted to DEM with the ***Request to Verify the Delineated Edge of Wetlands*** application (Rule 9.02) and the appropriate fee. Based on this application, a DEM wetland scientist will visit your property and review the flags. DEM may modify the edge flagged by your consultant and request that you illustrate the changes on a revised site plan. The larger



the property, the more likely it is that DEM will require some adjustments to the flagging.

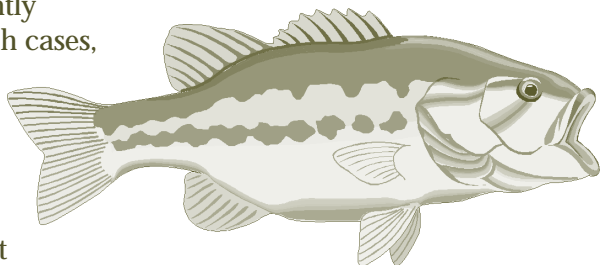
Because wetland delineation is an interpretative science it is common that DEM requests some change to the edges flagged by your consultant. DEM will verify the edges once all revisions have

been completed. Generally, the edges of vegetated wetlands (swamps, marshes, etc.) only are flagged and verified.

Riverbank and perimeter wetlands can be illustrated on a site plan without the need for edge verification. If you illustrate a floodplain limit and elevation, DEM will review and verify it under this application as well.



Because the wetlands regulatory process involves several different application types tailored to different needs, it is important to understand why you need the wetland information before you can decide what application to prepare. Figure 1 provides an outline of the application process and the permit types. You will be in a better position to develop your property if you know where the wetlands are before you start to plan your project. It is strongly recommended that you have your wetland edges flagged and verified if you are going to develop raw land. For planning purposes it is important to know where your wetlands are. You do not want to go through the time and expense of designing a project only to find that you are in or near wetlands. For smaller projects, especially those in already developed areas, a separate *Request to Determine the Presence of Wetlands* application or *Request to Verify the Delineated Edge of Wetlands* application may not be necessary if the proposed limits of work is sufficiently removed from the wetland. In such cases, it may not be necessary to pursue the separate verification step to determine the precise location of the wetland edges. In this event, unverified wetland edges are submitted to DEM as part of your actual permit application, usually a ***Request for Preliminary Determination*** application.



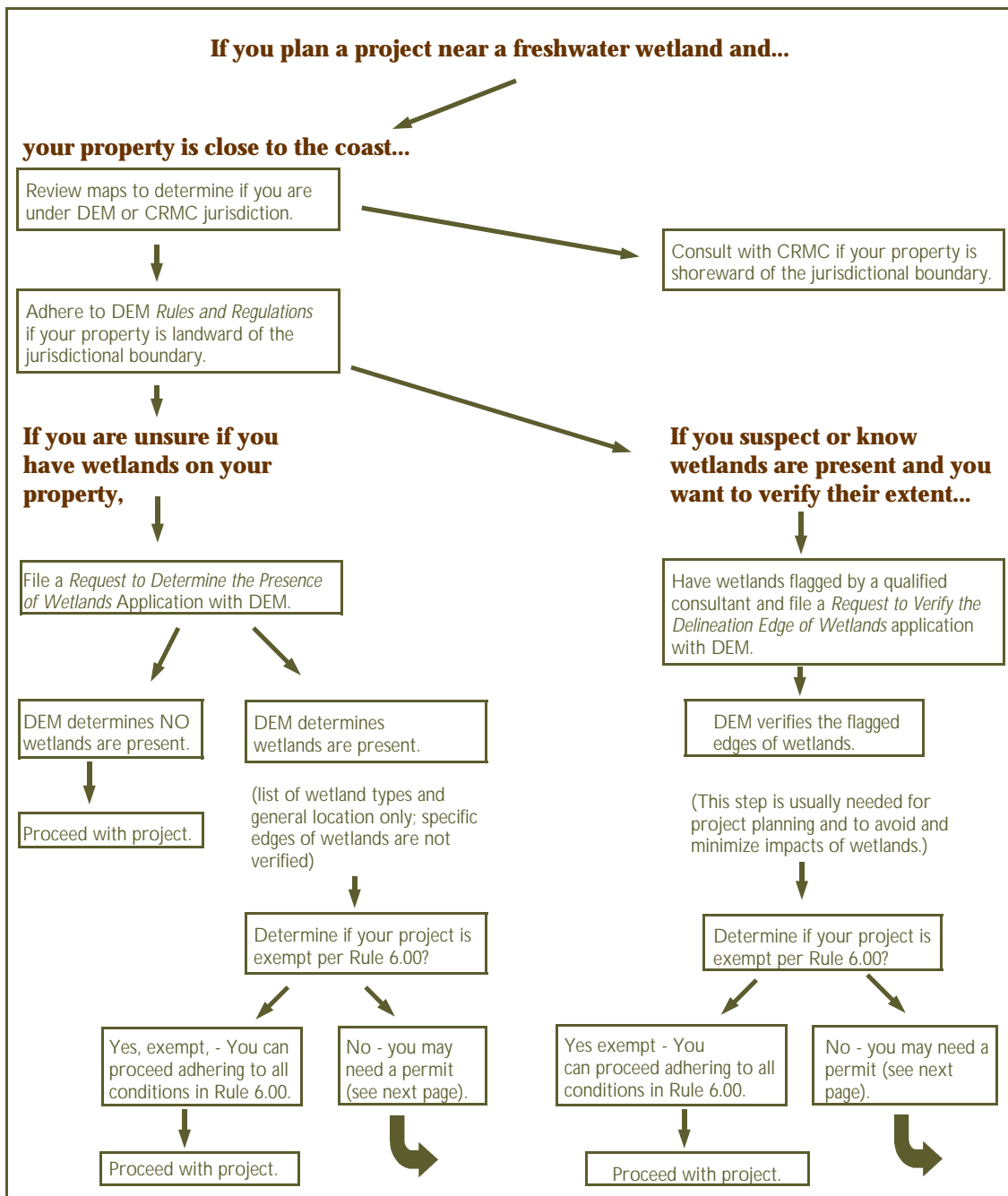


Figure 1 Outline of wetland application process

If you know or suspect wetlands are present...

and your project is outside of all regulated wetlands and not likely to alter a wetland... (see Rule 7.01B)

No permit required.

and your project is in or near a wetland...

File a *Request for Preliminary Determination* application (with a verified or unverified wetland edge).

DEM determines

Project is exempt per Rule 6.00.

Project is outside of DEM jurisdiction.

Project represents **insignificant** alteration and permit is granted with conditions.

Project represents **significant** alteration.

Proceed with project.

After avoiding and minimizing impacts to wetlands, your project still includes a significant alteration...

File an *Application to Alter a Freshwater Wetland* application.

45 day public notice period

Permit is granted for nondetrimental impacts.

Permit is denied for detrimental impacts.

Proceed with project.

Appeal process is available.

STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULES AND REGULATIONS
GOVERNING THE ADMINISTRATION AND
ENFORCEMENT OF THE
FRESHWATER WETLANDS ACT

April 1998

AUTHORITY:
THESE REGULATIONS ARE ADOPTED PURSUANT TO CHAPTERS 2-1-20.1, 42-17.1, 42-17.6,
AND 42-35 OF THE GENERAL LAWS OF RHODE ISLAND, 1956, AS AMENDED.

Cover page of the *Rules and Regulations*

EXEMPT ACTIVITIES



If there are wetlands on my property, do I automatically need a wetlands permit before I start my project?

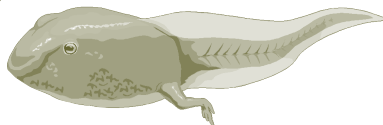
If you have already determined that there are wetlands on your property and you know where the wetland edges are, the next step is to determine if you must apply for a wetlands permit from DEM and how to go about it. For some minor activities defined in Rule 6.00 as “exempt activities”--those that have little or no impact on wetlands--you do not need a written permit from the DEM Wetlands Permitting Program provided that you meet and adhere to the conditions listed in Rule 6.00.

The list of exempt activities in Rule 6.00 was expanded in 1998 to enable property owners and others with small projects to proceed with minor alterations of wetlands without needing a permit. In most cases, exemptions are limited to those activities that are proposed in already impacted or disturbed areas such as in lawns, driveways, and roadway shoulders.

All I want to do is clear some trees, add on to my house, build a small garage, etc. Are these activities exempt?

The 1998 *Rules and Regulations* will give you the full details, as well as the limitations, of the exempt activities. The general categories of exempt activities are as follows:

- ✓ Limited cutting or clearing of vegetation in wetlands (Rule 6.02);
- ✓ Limited maintenance and repair activities (Rule 6.03);
- ✓ Demolition of buildings or property accessories (Rule 6.04);
- ✓ Changes to single family residences and property accessories (Rule 6.05);
- ✓ Changes to non-residential buildings or multifamily residences and property accessories (Rule 6.06);
- ✓ Utility emergencies (Rule 6.09);



- ✓ New utility lines (Rule 6.10);
- ✓ Temporary recreational structures (Rule 6.15);
- ✓ Moorings and anchorage for single boats (Rule 6.16); and
- ✓ Emergency water withdrawal for fighting fires (Rule 6.17).

If your particular project clearly falls within one of these Rules, you are free to proceed without any further coordination with the DEM Wetlands Permitting Program. Remember, however, that general conditions apply to all exemptions (see Rule 6.01), and keep in mind that other local, state, or federal permits may be required.



What exempt activities pertain to homeowners?

Perhaps the most significant new exemptions in the 1998 *Rules and Regulations* apply to single-family homeowners and their properties. Several activities are considered exempt for single-family homeowners if they are undertaken in existing cleared areas, such as lawns or driveways, that happen to be within a perimeter wetland or riverbank wetland. To be considered exempt, the activity also must be proposed 1) more than 25 feet from a pond, marsh, or swamp; 2) more than 50 feet from a flowing body of water or bog; and 3) must not involve fill in a floodplain. You should note that the word “existing” (as defined in Rule 5.31) refers specifically to a condition that was present at the time the Wetlands Act became effective (July 16, 1971) and has continually remained in the same condition. For example, if you or the previous owner of the property created a lawn or driveway in a perimeter wetland or riverbank wetland several years earlier without a permit, this exemption would not apply; in fact, the lawn or driveway could be considered a violation.

Recognizing that many common property improvements at existing home sites do not significantly impact wetlands, the following common home-related activities are considered exempt:

- ✓ Septic system repairs and alterations (ISDS permits are still required);
- ✓ Replacement of drinking water wells withdrawing no more than 500 gallons per day;
- ✓ Building additions, garages, or decks of up to 600 square feet in size;
- ✓ Addition of a second story to a home;
- ✓ Gravel driveways and gravel parking areas of up to 600 square feet in size; and
- ✓ Swimming pools, fences, sheds, and handicapped access ramps.

It can't be emphasized enough that limitations, provisions, and conditions do apply to these exemptions, so be sure to **read the full text of the exemption in the *Rules and Regulations***. For example, erosion and sediment controls must be installed and maintained for the duration of the construction activity.

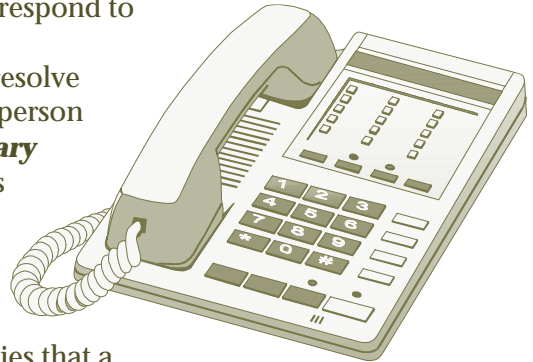


The *Rules and Regulations* describe other more specialized exemptions that apply to farmers, cities and towns, other government organizations, etc. These include emergency environmental protection, site remediation, agricultural practices, normal farming and ranching, conservation activities, monitoring and research, maintenance of drainage structures, roads, and bridges, etc.

The purpose of including all of these exempt activities in the *Rules* is to save property owners, businesses and others from the time and expense of obtaining a wetlands permit for some common minor activities. This also saves the Wetlands Permitting Program from the need to review projects that result in only negligible impacts to wetlands. The list above is just a summary of the exemption categories. You must read the full text of Rule 6.00 to confirm whether or not your specific project is considered an exempt activity.

What if I'm not sure if I am exempt under Rule 6.00?

If for any reason you are not sure whether your proposed activity is exempt under Rule 6.00, you may call the DEM Wetlands Permitting office to talk to a staff member. A staff person is on call each day to respond to technical questions from the public. In some circumstances, a conversation with DEM will resolve the matter. In many other instances, the staff person will advise you to file a ***Request for Preliminary Determination*** (Rule 9.03) application. This is the most appropriate way that the Wetlands Permitting Program can clearly determine whether your proposed activity is exempt.



Rule 6.00 clearly describes all of the activities that a person can undertake without obtaining a freshwater wetlands permit. If you are unable to determine whether your project fits under Rule 6.00 by reading the *Rules*, there may be something unusual about your situation. In this case, the wetland staff person may not be able to help you on the telephone without personally knowing the specific property and exactly what you wish to do. The ***Request for Preliminary Determination*** application is the most appropriate way to clear up any questionable areas.



REGULATION OF WETLAND ALTERATIONS



When is a wetlands permit needed?

With so many variables involved, the answer to this question is not simple. If you propose any project or activity that may alter freshwater wetlands (other than those activities specifically exempt under Rule 6.00), you will need a wetlands permit from DEM. Once you know where wetlands are located on your property, try to design your project so that it is outside of all wetlands in order to avoid the permit process altogether. If you are clearly outside of all jurisdictional wetlands, including perimeter wetlands, riverbank wetlands and floodplain, and your project will not affect adjacent wetlands, no permit is required. If you propose activities directly or even partially within any wetlands, you will need a permit before you can proceed with your project.

It is important to note that some activities that are proposed outside of wetlands may require a permit from DEM because of their close proximity to wetlands (Rule 7.01). For example, you may need a wetland permit to discharge parking lot runoff near a wetland, or to change the topography in such a way that it would alter surface or groundwater flows to a wetland, even though the actual construction might be outside of all regulated areas. This is where expertise is required; you should consider applying to DEM to remove any doubt.

If I am not exempt, what type of application should I prepare?

There are ten types of DEM wetland-related applications. The type of application required depends on the nature of the proposed project or request. Two of the application types are used to obtain a permit for activities in or near wetlands: 1) ***Request for Preliminary Determination*** (Rule 9.03), often called the Preliminary Determination or “PD” and 2) ***Application to Alter Freshwater Wetlands*** (Rule 9.05), commonly referred to as a “formal application.”

If you think you need a permit, the *Request for Preliminary Determination* application is a good place to start. It may result in the issuance of a permit if DEM determines that your proposed project represents an insignificant alteration to a

wetland. By Rule, an insignificant alteration to a wetland is one that would have minimal impact on the functions and values of wetlands. Appendix 1 of the *Rules and Regulations* describes many activities that DEM commonly determines to be insignificant alterations of wetlands. For example, the construction and installation of a new single dock, excavated pond construction less than ¼ acre in size, driveway construction over some watercourses, and improvements to existing roads and bridges are commonly found to represent insignificant alterations to wetlands.

Through the *Request for Preliminary Determination* application, DEM may also determine that your proposed project is outside of the jurisdiction of the Wetlands Act and the *Rules and Regulations*. It is DEM's experience that many of the PD applications result in a finding of "no jurisdiction," which means a permit is not required. Many city and town building officials require a property owner to have either a DEM wetland permit or DEM findings of no jurisdiction before they will issue a building permit. This often obligates people to apply to DEM even though they are not altering a wetland by their project.

It is possible that through the PD application, DEM could determine that your proposed project represents a "significant alteration" which may result in greater impact to wetlands. This is not a denial of your project. It is merely a determination informing you that an *Application to Alter Freshwater Wetlands*

Wetland Application Types

1. Request for Emergency Alteration (Rule 9.01)
2. Request to Determine Presence of Wetlands (Rule 9.02 (B))
3. Request to Verify Delineated Edge of Wetlands (Rule 9.02)
4. Request for Preliminary Determination (Rule 9.03)
5. Application Relating to Farmers (Rule 9.04)
6. Application to Alter a Freshwater Wetland (Rule 9.05)
7. Application for Renewal (Rule 9.07)
8. Application for Permit Transfer (Rule 9.08)
9. Application for Permit Modification (Rule 9.09)
10. Change in Owner During Application Processing (Rule 8.06)

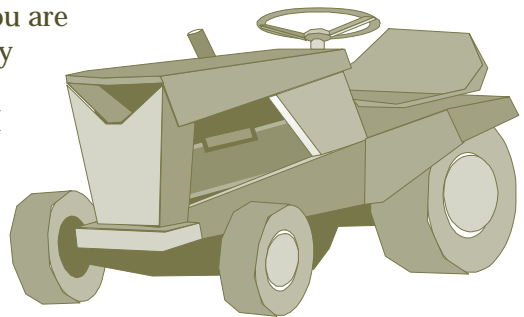
would be required. The *Application to Alter* may result in the issuance of a permit if DEM determines that the proposed project complies with DEM's review criteria and does not represent a random, unnecessary, and/or undesirable alteration to the freshwater wetland. Appendix 2 of the *Rules and Regulations* describes categories of significant alterations that could result in negative impact to the natural character, functions and values of any freshwater wetland.

Determination, verification, application, permit? What do I do first?

Flow charts in Figure 1 illustrate the wetland application process. It is necessary to submit an application to the DEM Wetland Program if you want DEM to visit your property and if you want any official response from us. The different application types are designed to answer questions you may have about your property. The application you choose depends on what you want to know. The sequence of steps will be different for various types of projects. A real estate transfer is different from a specific construction project. Most applicants do not have to utilize all the application types.

What if I am a “farmer?” Do I have to apply for a wetlands permit?

The Wetlands Act and the *Rules and Regulations* specifically define who is considered a “farmer” for the purpose of the Wetlands program. Some, but not all, activities that are routinely carried out by farmers are exempt from the *Rules and Regulations*. If you are a farmer and you want to complete an activity that is not exempt, then you must submit an ***Application Relating to Farmers*** to the DEM Division of Agriculture. If the Division of Agriculture determines that your application represents an insignificant alteration of wetland, they will issue a permit to you. If a permit cannot be issued because the project represents a significant alteration to a wetland, you can either



reduce the scope of the proposed project so that the impact becomes insignificant, or you can leave the scope of work unchanged and submit an ***Application to Alter a Freshwater Wetland*** directly to the Wetlands Permitting Program. You are encouraged to call the DEM Division of Agriculture at (401) 222-2781 to discuss the details regarding farming applications.

Do I need a wetlands permit in an emergency situation?

Public utilities, municipalities, and state or federal agencies can make a verbal or written request for permission to undertake emergency wetland alterations if the emergency poses a threat to public health and safety. The work proposed to address the emergency cannot cause any permanent alteration to a wetland, and the wetland must be restored as much as possible to its condition prior to the emergency action. For example, there may be a failed bridge on a town road that crosses a small stream. Obviously, the town must take immediate action to protect public safety, and that may require the use of heavy equipment in and around the stream. DEM normally allows this emergency work based on a phone call from the town, provided that downstream wetlands are protected prior to the emergency work (silt fencing, hay bales) and that the wetland area is restored and no permanent alteration of wetland occurs.



APPLICATION PREPARATION



What information does DEM require for a permit application?

An Application Package is available from DEM's Office of Technical and Customer Assistance at 222-OTCA, or directly from the Permitting Program. Both offices are located at 235 Promenade Street in Providence. The package contains a multi-purpose application form, a list of the enclosures required for each application type, a list of site plan requirements, a list of all required field work, and the application fee schedule. The 10-page Application Package may seem quite extensive at first, but if you review it carefully, you can learn everything that you need for a complete application. Additional details regarding the application requirements are provided throughout the *Rules*.

Permit Application Requirements

- ❖ Application form completed and signed by applicant;
- ❖ Site plans with location map, wetlands, proposed project, limits of work, erosion control, contours, distance to nearest intersection, etc;
- ❖ Field work including property boundaries, wetland flags, limits of work, road centerlines, corners of structures, etc.
- ❖ Supporting reports including wetland delineation forms, avoidance and minimization statement, and drainage reports; and
- ❖ Appropriate fee.

Can DEM help me with all of this?

Yes, the Office of Technical and Customer Assistance staff and Wetland Permitting staff can help you interpret the Application Package and determine how to prepare any of the applications. This help is available whether you are an individual planning to build a single family house, a private consultant planning a subdivision, or a local official planning a major utility improvement project. DEM staff can answer questions on the phone or can schedule pre-application meetings

with you. This help is available each business day from 8:30 AM to 4:00 PM through DEM's Office of Technical and Customer Assistance at (401) 222-6822 and the DEM Wetlands Permitting Program. The Office of Technical and Customer Assistance and the Wetlands Permitting staff coordinate public information requests.

The Office of Technical and Customer Assistance was created in 1996 to provide a customer service program within DEM. The Office is staffed by a team of professionals who are familiar with the operation of all DEM offices. Staff is available for general assistance regarding the Wetlands Program, and for file review coordination, pre-application assistance and meetings, and major projects coordination and reviews.



If you have a question that is not answered in this Guide or you need help interpreting the *Rules and Regulations*, the Office of Technical and Customer Assistance can help. If you would like to know if DEM has inspected your new property and has made a wetlands determination, the Office of Technical and Customer Assistance can help. If you would like to review a wetlands file, the Office of Technical and Customer Assistance can arrange this for you. If you have already had your wetlands flagged and verified by DEM and you are deciding on a house location or a utility crossing, etc., the Office of Technical and Customer Assistance can meet with you and provide guidance on how to avoid and minimize impacts to wetlands. If your project seems complicated and you think you will need permits from more than one DEM Division, the Office of Technical and Customer Assistance will coordinate with DEM Divisions or other state agencies for you. When needed, the Office of Technical and Customer Assistance will bring in technical staff from the Wetlands Permitting Program to help with technical questions or to attend pre-application meetings.

In addition to the Office of Technical and Customer Assistance staff, a scientist from the Wetlands Permitting Program is on call each day to answer technical questions from the public. Questions about a specific technical issue or about an ongoing application can be directed to this person at (401) 222-6820.

Application Preparation Tips

- ❖ Don't forget to sign the application form.
- ❖ Double check the fee amount.
- ❖ Check how many plan sets are needed.
- ❖ Label all the wetlands on the plans.
- ❖ Illustrate and label your proposed limits of disturbance on the site plans.
- ❖ Make sure the narrative matches the plans.
- ❖ Don't forget to show the hay bales.
- ❖ Ensure that all site work is complete (e.g. wetland flags, limits of work, etc.)
- ❖ Stay involved with your consultant.
- ❖ Call DEM with any questions prior to submittal.

What do I need to do to ensure that I can get a wetlands permit?

Although a property may contain wetlands, this fact does not prevent you from obtaining a permit. The DEM grants approximately 400 wetland permits per year, and actually denies very few permit applications. The application review process is designed so DEM can determine whether a proposed wetland alteration is random, unnecessary, or undesirable and if any proposed work will result in an insignificant or significant alteration to wetlands. All applicants are **required to avoid** impacts to freshwater wetlands including the perimeter wetland, riverbank wetlands and floodplain. As the applicant, you are required to consider alternative layouts for your project that will not encroach on wetlands. It will be necessary to think creatively about other alternatives. Ask yourself how you can best accomplish your objective, while avoiding the wetlands. If you are severely constrained by wetlands, you may have to rethink your project objective (e.g. scale back) and you may even want to consider moving your project to another property that has fewer wetlands.



You are required to **minimize** encroachment and impact to the wetland as much as is possible if you cannot totally avoid the wetland. For example, instead of a 20-foot wide driveway you may have to consider a 12-foot wide driveway. Avoiding and

minimizing impacts may mean that a proposed location for a driveway may have to be changed, or that your ideal house location has to be shifted, or that the utility line may have to go around the wetland rather than through it. Larger developments may have to be reconfigured to reduce the number of roadway or utility crossings; common driveways and roads could be investigated to reduce the amount of new pavement draining to wetlands; residences could be clustered to preserve wetlands. It may be that the number of residential lots or the size of a commercial building could be reduced to avoid and minimize impacts to wetlands. Avoidance and minimization are required steps when developing properties in and around wetlands.

Project Design Hints

- ❖ Locate buildings, driveways, roads away from wetlands.
- ❖ Minimize the limits of disturbance and leave a natural buffer around wetlands.
- ❖ Grade to maintain natural contours and to reduce erosion.
- ❖ Avoid wetland fill.
- ❖ Avoid tree-cutting and other vegetation removal in all wetlands.
- ❖ Maintain natural drainage patterns.
- ❖ Avoid direct discharges.
- ❖ Use best management practices to spread out the discharge of stormwater.
- ❖ Use best management practices to treat stormwater before discharge into wetlands.
- ❖ Include sediment and erosion controls and plan for their maintenance.

As part of the application package you are required to prepare a written report on how you have avoided and minimized impacts to wetlands. When reviewing your application the permitting staff will consider whether you have taken all steps to avoid and minimize. The DEM will weigh all of the conditions when deciding whether to grant a permit. If you cannot fully avoid the wetland, DEM may determine that your project represents a significant alteration to wetlands; you will then need to submit an *Application to Alter Freshwater Wetlands*. The *Application to Alter* is more expensive to prepare and submit, and more time consuming for DEM to review. It is to your advantage, **as well as the wetlands**, to avoid wetlands altogether or to reduce the scale of your project to that which can be approved as an insignificant alteration through the *Preliminary Determination* application.

Will I need to hire other professionals to work with me?

As you read the wetlands Application Package you will notice many technical requirements that involve professional expertise. Depending on the scope of your project, you may have to hire a wetland scientist, a land surveyor, and/or an engineer to help you prepare the application for a wetlands permit. There are many scientists, engineers and surveyors who are knowledgeable about DEM wetland application requirements. You may choose to coordinate the preparation of your application yourself, or you can hire a professional to coordinate the application preparation and submit it to DEM for you.

If your project involves changes to developed property and is minor in nature (for example, without any proposed grade changes), it may be possible to prepare your site plan and application on your own. The plan would still have to have a scale, north arrow, locus map, approximate wetland edges, limits of work, erosion control, etc. The Office of Technical and Customer Assistance can advise you whether you will need professional help to prepare your application.

PERMITS

Information on How to Apply or the Status of an Application

Contact

Office of Technical and Customer Assistance

235 Promenade St.,

Providence, RI 02908

(Handicapped access and parking available at the main entrance on Beach St.)

401-222-6822

TDD Line: 401-831-5508

Monday-Friday

8:30 am - 4:00 pm

Web Site: www.state.ri.us/dem

How can I find qualified professionals?

DEM routinely works with many professional scientists, engineers and land surveyors. Because DEM is a state agency, we are not able to recommend any specific person or company. For a partial list of available consultants we recommend that you contact the following statewide professional societies:

Rhode Island Association of Wetland Scientists (RIAWS)
P. O. Box 1514, Providence, RI 02903

The Registry of Wetland Professionals, published by RIAWS, is available at DEM Office of Technical and Customer Assistance, RIAWS, or from local building officials.

Board of Design Professionals (engineers and surveyors)
One Capitol Hill, 3rd Floor, Providence, RI 02908
Phone (401) 222-2565
Fax (401) 331-8691

DEM has developed a list of recommended minimum qualifications for wetland and wildlife professionals who may perform wetland delineations or wildlife impact assessments for applications. These guidelines are available from the Office of Technical and Customer Assistance and the Wetlands Permitting Program.

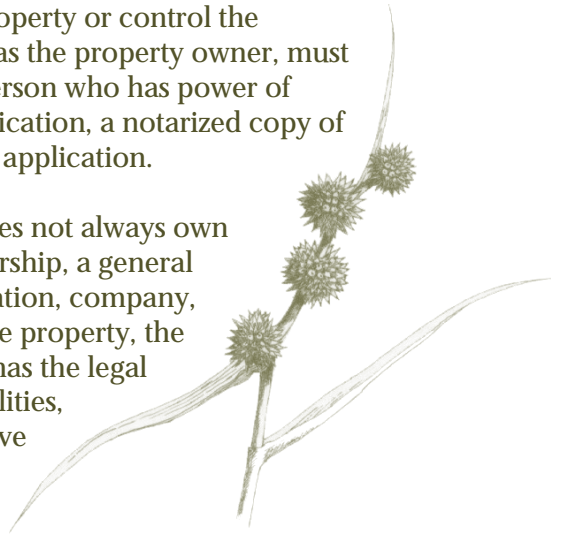
In addition, the Yellow Pages for Rhode Island and nearby states provide a listing of various environmental professionals. We recommend you specifically ask any person or company you may hire if they have prepared DEM wetlands applications and to provide references. If time permits you may review DEM files of reference applications the consultants have previously submitted to DEM. Finally, local officials may be able to provide references for consultants that routinely work in particular regions of the state.



Who is authorized to be an applicant?

The applicant must be the owner of the property or control the easement where the activity is proposed, and as the property owner, must sign any application submitted to DEM. If a person who has power of attorney for the property owner signs the application, a notarized copy of the power of attorney must be attached to the application.

DEM recognizes that a single individual does not always own property. If the property is owned by a partnership, a general partner must sign the application. If a corporation, company, fire-district, club or non-profit agency owns the property, the application must be signed by an officer who has the legal authority to bind the entity. Finally, municipalities, state, federal or other public agencies must have applications signed by the chief executive officer of the agency, a senior executive officer with responsibility for the overall operations of a principal geographic unit of the agency, or by the ranking elected official.



Do I have to pay an application fee?

All applicants must pay an application fee at the time the application is submitted to DEM. DEM will not process any application without the required fee.

The amount of the fee varies, depending on the type of application submitted, the area of wetland being altered, the size of the property, and with some very limited projects, the cost of the project itself.

The fee schedule takes into account DEM resources anticipated to evaluate the application. The general fee requirements are described in the Application Package. All fees must be paid by check or money order made payable to the Rhode Island General Treasurer. Fees greater than five hundred dollars (\$500.) must be paid by a certified bank check.



**RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WATER RESOURCES\PERMITTING PROGRAM**

235 Promenade Street, Providence, RI 02908

Telephone: 401-222-6820, Telecommunication Device for the Deaf: 401-222-6800

APPLICATION FORM

Please type or print

PART A Purpose of Application:

- ☐ Request to Determine Presence of Wetlands only (see Rule 9.02(B))
- ☐ Request to Verify Delineated Edge of Wetlands (see Rule 9.02)
- ☐ Request for Preliminary Determination (see Rule 9.03)
- ☐ Application to Alter a Freshwater Wetland (see Rule 9.05)
- ☐ Application For Renewal (see Rule 9.07)
- ☐ Application for Permit Transfer (see Rule 9.08)
- ☐ Application For Permit Modification (see Rule 9.09)
- ☐ Change in Owner During Application Processing (see Rule 8.06)

AGENCY USE ONLY

Applicant No.:

AGENCY USE ONLY

Application Received:

PART B Applicant Information:

- Name of Applicant (see Rules 5.06 and 8.02): _____
Note: The applicant must be the owner of the property or easement which is the subject of this application or must be the government agency or entity with power of condemnation over such property or easement.

- Mailing Address of Applicant: _____
Street/Road _____ P.O. Box _____

City/Town _____ State _____ Zip Code _____ Telephone No. _____

- Location of Property subject to this Application:

City/Town _____ Street Abutting Site Street address number (if applicable) _____

Nearest street intersection and its distance and direction from site _____

Nearest utility pole number(s): _____ Direction to site from abutting street: N ____ S ____ E ____ W ____

Tax Assessor's Plat(s) and Lot No.(s): _____

Recorded Plat (s) and Lots No.(s) (if no Tax Assessor Plat and Lots available): _____

PART C General Information

- Any previous application for this site? Yes No Provide Application No.(s) _____
- Any previous enforcement action for this site? Yes No Provide File No(s) _____
- Amount of wetland area to be altered (if applicable, see Rules 8.03, 8.04):
square feet: _____ linear feet (if watercourse): _____
- Amount of fee submitted for Application (see Rules 8.03, 8.04): \$ _____ Check No. _____

PART D For Application Renewal Only:

- Name of Original or Subsequent Permittee: _____
- Application/Permit No. _____ Permit Expiration Date: _____
- Number of previous renewals issued (if applicable): _____
- Statement of Applicant: I hereby state that I am requesting renewal of the original or subsequently modified permitted project under Application/Permit No. _____. I fully understand the permit limitations and will comply with any and all conditions of the permit.
- Applicant's name: (print) _____ (signature) _____

Sample application form, page one of two

APPLICATION REVIEW



What happens to an application after it is submitted?

When an application is submitted to DEM, it is assigned an application number, that helps identify it during the review process. DEM sends each applicant a letter confirming receipt of the application and informing him or her of the assigned application number. DEM uses the assigned number to log and track all actions relative to the application. You should always refer to the application number when corresponding with DEM about your application.

According to the *Rules and Regulations*, DEM processes applications in the order of submission, but final decisions are not necessarily rendered in that order because some applications are much more complicated than others and require more time to review. DEM completes separate administrative and technical

reviews of each application. If the application is found to be incomplete at any step during the review, DEM may request additional information and will not continue to process the application until an

adequate response is received. Such correspondence is directed to the applicant and copied to any consultant who has signed the application form. An application file will be closed if the applicant does not respond to requests for additional information within one year.

Common Administrative Deficiencies

1. Fee miscalculated.
2. Impact avoidance discussion missing or incomplete.
3. Application form incomplete.
4. Proposed project shown on edge verification application.
5. Applicant is not the property owner.
6. Not enough site plan copies submitted.
7. Wetland edge forms missing.

The Director of DEM may process an application out of sequence if it is submitted with a Certificate of Critical Economic Concern. This designation is determined by the state Economic Development Corporation at One Exchange Street, Providence. The Economic Development Corporation will render a decision

within 30 days regarding the appropriateness of a project for a Certificate. DEM does not participate in the designation, but does give priority review to applications submitted with a Certificate.

DEM will notify the applicant in writing of any determination, approval, or denial.



Common Technical Deficiencies (PDs)

1. Limits of disturbance not defined.
2. Wetlands incorrect on site plans.
3. Discrepancy between fieldwork and site plans.
4. Project description incomplete.
5. No stormwater Best Management Practices (BMP's).
6. Discrepancy between narrative and site plans.
7. Did not avoid and minimize project within wetland.
8. Site plans illegible.
9. Floodplain not shown.

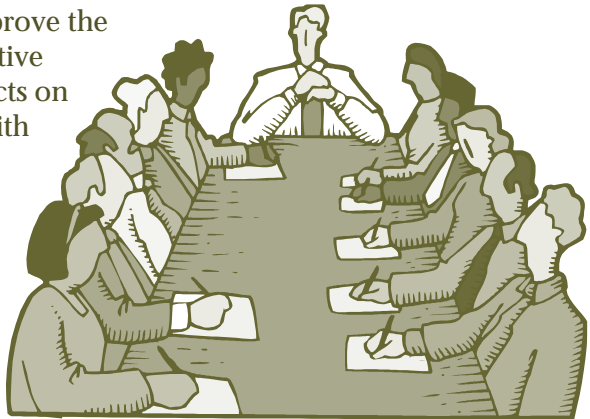
Under what circumstances does DEM issue a permit?

DEM grants wetland permits if an applicant has pursued all alternatives to avoid and minimize impacts to wetlands; does not propose any random, unnecessary, or unavoidable alteration of wetlands (as defined in the Rules); and if the project adheres to the technical review criteria in Rule 11.00. The review criteria are designed to protect wetland functions and values, and to protect people from wetland hazards. An insignificant alteration permit may be granted in response to a *Request for Preliminary Determination* application for a range of activities that would result in minimal impact on the functions and values of wetlands. A significant alteration permit may be granted in response to an *Application to Alter*. DEM does permit some direct alterations of wetlands. Alterations of perimeter wetland and riverbank wetland are permitted more frequently than alterations of other wetland types.

How does the *Application to Alter* review process differ from other applications?

Because this application involves a significant alteration to wetlands, this is the most time-consuming for DEM to review and process. Within 14 days after DEM receives a complete application with all supporting documentation, DEM advertises a 45-day public comment period. For an application to be deemed complete for notice it must include all requirements set forth in the Application Package (e.g., reports, abutters list, certified copy of the deed). DEM will notify all abutters within 200 feet of the proposed project, the municipality and other organizations interested in wetland protection about the pending application. Anyone can comment to DEM about the application during the 45-day period. In accordance with the Wetlands Act, the municipality can disapprove of the proposed project and notify DEM of the decision during the 45 days. If the municipality disapproves the project, by law the DEM can not approve the application.

If the municipality does not disapprove the application, but others submit substantive objections regarding the project impacts on wetland functions and values, DEM, with the authorization of the applicant, will schedule a public hearing. The applicant is required to cover the hearing costs. Following the 45-day comment period and after the public hearing (if required) DEM will make a decision to approve or deny based on the criteria in Rules 10.00 and 11.00. DEM will notify the applicant of the decision.



As part of the application review, DEM biologists and engineers will assess the functions and values of the wetlands to be altered, and they will determine how the subject wetland contributes to the functions and values. The biologists and engineers will also complete an impact assessment and determine how the proposed project will effect the wetland functions and values. In some cases, DEM finds that the proposed alterations actually represent an insignificant alteration and grants a permit without a public notice.

What happens to my application if I have a freshwater wetland violation on my property?

Occasionally a person may submit an application to DEM for a wetland permit, only to be told that there is an outstanding violation on the property. Some landowners may not be aware that they have a violation on their property, or even that they may have inadvertently caused a violation. Under certain circumstances, an applicant may be asked by the Wetlands Permit Program to resolve the violation prior to, or concurrent with, the processing of the application. If the violation is more serious, the permit staff will refer the file to DEM's Office of Compliance and Inspection Wetland Enforcement Program to resolve the violation. In either case, the violation must be resolved before an application can be fully processed.

DEM has the authority to initiate various enforcement actions related to the severity of the violation. Once a complaint has been forwarded by the Permitting Program to the Wetlands Enforcement Program, it will issue a Notice of Intent to Enforce and require restoration of the altered wetland(s). Upon satisfactory completion of the required restoration, the Permitting Program will be notified to resume processing of the original application. If there is no response or the landowner refuses to complete the restoration, it may be necessary to issue a Notice of Violation (NOV) with an order to restore the subject wetlands and the requirement to pay administrative penalties. In addition, the NOV will be forwarded to the city or town where the property is located to be recorded in the land evidence records.

If DEM denies an application, what recourse is there?

The DEM does not deny many wetland applications. Most applicants are able to satisfactorily avoid and minimize impacts to wetlands and receive permits. If an application is denied, it may be that DEM generally believes an alternative exists to what is proposed which would lessen the impact of the project on wetlands. However, if your application is denied, you have the right to request a hearing to appeal the decision. The hearing request must be made in writing and filed directly with the Administrative Adjudication Division within 10 days of the receipt of DEM's decision. The hearing may not be necessary if all parties enter into settlement negotiations and execute a Consent Agreement.

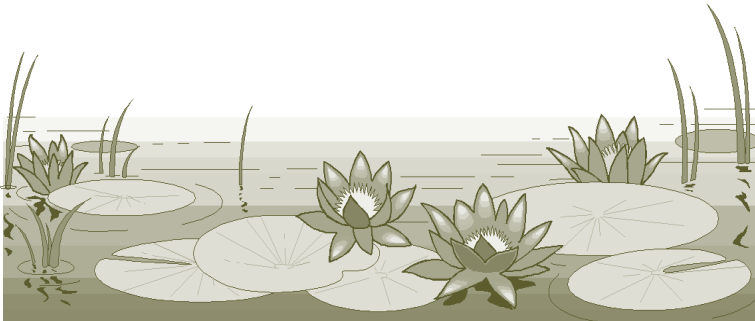
AFTER MY PERMIT IS GRANTED



What should I do with my wetlands permit?

The most important thing you can do with your permit is READ IT. If there is any section of the permit that you do not understand, you should talk to a Wetland Program staff person to clarify your questions. As the property owner, you should keep your original permit. It is also critical that you deliver a copy of the entire permit to your construction contractor and insist that he or she also read it.

All permits contain terms and conditions that are specific to your property and project and some of these terms and conditions may actually supercede your plans. You will most likely be required to record your permit in the land evidence records at your city or town hall and inform DEM that you have done so. You will also be required to post a sign on your property with your DEM application number visible throughout the construction period. Ordinarily, permittees have to inform DEM in writing immediately prior to construction and when construction is completed. Posting a sign will also notify people in your neighborhood that a DEM permit has been obtained and may avoid unnecessary complaints to the Wetland Enforcement Program. Permits also require that erosion controls be properly installed and maintained and that you strictly adhere to approved limits of disturbance. Sometimes on larger projects near particularly sensitive wetlands, DEM may require that you hire an environmental consultant to monitor your project during construction and submit monthly status reports to DEM.

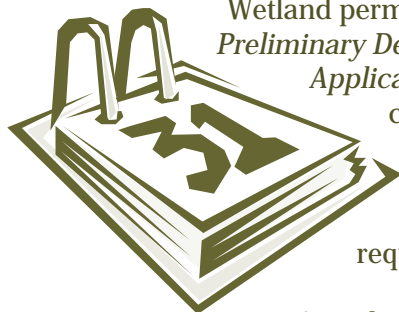


What if I change my project after my wetlands permit is granted?

If you want to make minor modifications to the approved project prior to construction, you must submit an **Application for Permit Modification** (Rule 9.09). The DEM will determine if the change in the scope of your project will cause any change in impact to the wetland. DEM will issue you a modified permit if the extent of impact has not increased. If the modifications are more than minor or the limit of disturbance has increased, a new application will be required.

For example, suppose you have been granted a permit to build a house partially within a perimeter wetland. Before any construction work has started, you decide that you would like to build a different style house or you would like to put the house in a slightly different location. Assuming that you can fit the house in the new location within the same “limit of clearing and disturbance” that was already permitted, you would submit the Application for Permit Modification with your revised plans, application fee, and letter explaining the modifications to the Wetlands Program for review.

My permit is about to expire. What should I do?



Wetland permits are valid for only a specific period of time. *Preliminary Determination* permits are valid for four years and *Application to Alter* permits are valid for one year. If your construction will not be completed before the expiration date of your permit, you must submit an **Application for Renewal** with the renewal fee, no later than 60 days before the active permit expires. The renewal request cannot involve any changes to the original project.

A *Preliminary Determination* permit can be renewed for one additional two-year period provided that you can show you are in conformance with the permit. The *Application to Alter* permit can be renewed for three additional one-year periods. It is possible that a fourth one-year renewal may be granted if you are in conformance with your permit and you can demonstrate that all construction will be completed within that time frame. After you submit the application, a DEM wetland scientist will inspect your project to make sure it is in

conformance with the approved plans and all the original permit conditions before granting a permit renewal. Please note that permit renewals will not be granted for projects in nonconformance with the permit approval. Projects must conform with approved plans before the renewal will be approved.

What should I do with my wetlands permit if I sell my property?

An original permit issued by DEM is valid only for the original applicant. If you sell your property after the permit is issued, but before it expires, you should give it to the new owner along with the approved site plans, and the new owner would submit an ***Application for Permit Transfer*** with the appropriate application fee. This application must be accompanied by a certified copy of the deed transferring the property, as well as a notarized statement signed by the new owner in which he agrees to all the conditions in the permit. The expiration date of the permit remains as originally issued. At some point the new owner may have to submit an *Application for Permit Renewal*.





RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767 TDD 401-831-5508

May 24, 2000
John Doe
25 Red Maple Street
Anywhere, RI 02XXX

Insignificant Alteration – Permit

RE: Application No. 00-0XXX in reference to the property and proposed project located:

Approximately 250 feet south of Red Maple Street, by Utility Pole No. 57, approximately 1000 feet southeast of the intersection of Red Maple Street and Elm Street, Assessor's Plat 15, Lot 3, Anywhere, Rhode Island.

Dear Mr. Doe:

Kindly be advised that the Department of Environmental Management's ("DEM") Freshwater Wetlands Program ("Program") has completed its review of your **Request for Preliminary Determination** application. This review included a site inspection of the above referenced property ("subject property") and an evaluation of the proposed single family residence, private well, and Individual Sewage Disposal System (ISDS) as illustrated and detailed on site plans submitted with your application. These site plans were received on April 5, 2000.

Our observations of the subject property, review of the site plans and evaluation of the proposed project reveals that alterations of freshwater wetlands are proposed. However, pursuant to Rule 9.03 of the Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act (Rules), this project may be permitted as an **insignificant alteration** to freshwater wetlands under the following terms and conditions:

Terms and Conditions for Application No: 00-0XXX

1. This letter is the DEM's permit for this project under the R.I. Fresh Water Wetlands Act, Rhode Island General Laws (RIGL) Section 2-1-18 et seq.
2. This permit is specifically limited to the project, site alterations and limits of disturbance as detailed on the site plans submitted with your application and received by the DEM on April 5, 2000. A copy of the site plans stamped approved by the DEM is enclosed. Changes or revisions to the project which would alter freshwater wetlands are not authorized without a permit from DEM.
3. Where the terms and conditions of the permit conflict with the approved site plans, these terms and conditions shall be deemed to supersede the site plans.
4. You must notify this Program in writing immediately prior to the commencement of site alterations and upon completion of the project.

Sample insignificant alteration permit letter, page one of four

OTHER PERMITS AND PROGRAMS



Will I need any other permits other than a DEM Wetlands permit?

It is unlikely that the DEM wetlands permit will be the only permit you need if you are developing raw property. The federal government, through the U.S. Corps of Engineers, also regulates freshwater wetlands through the Clean Water Act (33 U.S.C. 1344). If you propose to discharge dredged or filled material into wetlands, you will need a Clean Water Act Section 404 permit. In addition, a Section 401 *Water Quality Certificate* may be required.

In 1997, the State of Rhode Island and the Corps of Engineers established a process where DEM is authorized to grant the Clean Water Act Section 404 permit for the Corps regarding certain limited activities. This Programmatic General Permit (PGP) is meant to streamline wetland permitting for those applicants who propose minor alterations, by eliminating the need to apply to both DEM and the Corps. Under this program DEM's wetland permit also serves as the Corps Section 404 permit. To qualify under this program, you must submit additional plan sets and documentation to DEM for review and approval concurrent with the DEM wetlands application review. The DEM Application Package provides more details on the specific requirements.



Depending upon the scope of your project, you also may need an Individual Sewage Disposal System (ISDS) permit and a state-triggered Water Quality Certificate from DEM. If you propose land disturbance greater than 5 acres and a point source discharge to "waters of the state," a Rhode Island Pollution Discharge Elimination System (RIPDES) permit is required. If you are proposing any subsurface disposal of commercial and industrial wastewater and stormwater, you will need an Underground Injection Control (UIC) permit. The Office of Technical and Customer Assistance can provide you with more information about the requirements of these and other DEM permits.

What if I'm already working towards a wetlands permit with DEM? Do I have to reapply to CRMC?

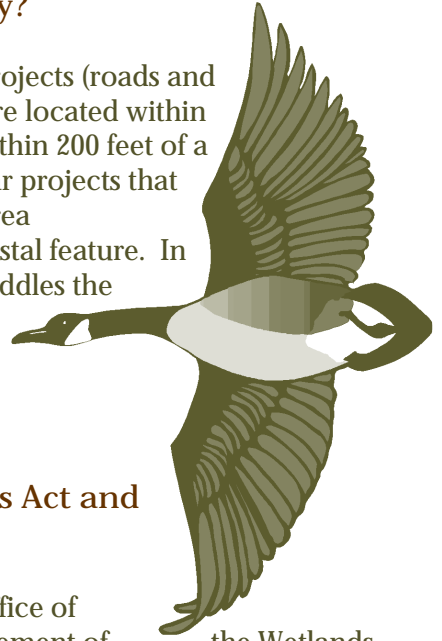
On August 18, 1999 a new freshwater wetland program became effective whereby CRMC regulates "freshwater wetlands in the vicinity of the coast." All freshwater wetlands applications pending with DEM on August 18, 1999 will continue to be reviewed by DEM under the Rules and Regulations in effect at the time the application was submitted. No additional freshwater wetlands permit will be required from the CRMC. If DEM has verified wetland edges for you but you have not yet submitted an application for a permit to DEM, that permit application should be submitted to the CRMC. CRMC will respect the wetland edge verification completed by DEM. Ongoing DEM enforcement actions on properties that are shoreward of the line generally will also continue to be processed by DEM.

All Determinations and permits issued by DEM prior to August 18 will remain valid for the specified time periods. Any *Application for Renewal* of a valid permit that was granted by DEM prior to the effective date of the CRMC Rules and Regulations will be submitted to DEM for processing. Similarly, any *Application for Permit Modification* will be submitted to DEM. If DEM determines that the modification requires a new permit, the applicant would be required to submit a new application to CRMC for review and approval.



What about applications for projects that are on the jurisdictional boundary?

The CRMC will review all applications for linear projects (roads and utilities) that are on the jurisdictional boundary and are located within a CRMC Special Area Management Plan (SAMP), or within 200 feet of a coastal feature. DEM will review applications for linear projects that are on the line, but are not located within a Special Area Management Plan and are not within 200 feet of a coastal feature. In the rare occasion that an application for a project straddles the jurisdictional boundary and wetlands are in both jurisdictional areas, the agencies have agreed that in most cases a single review agency will be designated.



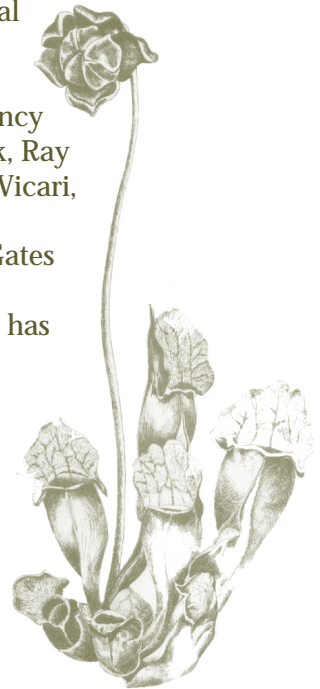
What does DEM do to enforce the Wetlands Act and *Rules and Regulations*?

The Wetland Enforcement Program at the DEM Office of Compliance and Inspection is dedicated to the enforcement of the Wetlands Act and the *Rules and Regulations*. It's primary goal is to ensure the protection of the wetland resource and to respond to all complaints related to possible violations of the Freshwater Wetlands Act. If it is discovered that unauthorized, non-exempt work has occurred within freshwater wetlands, the Office of Compliance and Inspection will require the wetlands to be restored. If possible, the office will attempt to resolve all violations with a minimum of paperwork. When this is not possible because of the nature and extent of the violation, it will be necessary to issue a Notice of Intent to Enforce, which requires restoration of a wetland. If the Notice of Intent to Enforce does not resolve the manner, it may be necessary to issue a Notice of Violation. The Notice of Violation orders full restoration of the altered wetlands, requires an administrative penalty, and is recorded in the Land Evidence Records of the city or town where the property is located. If requested within 10 days, any person issued a Notice of Violation has the right to a hearing on the issues raised in the Notice.



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